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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,535

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Yasuo Fujii

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10/30/2008

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EXAMINER

DEMILLE, DANTON D

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

10/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/527,535	Applicant(s) FUJII ET AL.	
	Examiner Danton DeMille	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7, 8, 12-24, 27-39, 43, 44 and 46 is/are pending in the application.
- 4a) Of the above claim(s) 13-24, 27-39 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 3, 44 and 46 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 7, 8 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/4/08, 5/5/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Newly amended claims 23, 24, 27-34 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 23 now recites a support base is configured to support “a substantially entire length of a lower thigh of the leg portion or a forearm of the arm portion”. Claim 23 also includes a driving portion configured to move the pressing portion longitudinally. The elected invention of figures 1-8 does not support “a substantially entire length of the lower thigh of the leg portion or a forearm of the arm portion”. This would appear to be claiming the non-elected invention of figure 41.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23, 24, 27-34 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Newly amended claims 35, 37, 43 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 35 now includes “a cover portion configured to be rotatable around a rotation axis” and “wherein the massaging portion is mounted at a part of the cover portion which is opposed to the support face”. The specification recites the cover portion as element 323 which is part of the embodiment of figures 30, 31. The elected invention of figures 1-8 does not support a “cover portion”.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution

on the merits. Accordingly, claims 35, 37, 43 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 44 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no clear antecedent basis for “the support portion” in the penultimate line of claim 44.

Claim Rejections - 35 USC § 103

Claims 2, 3, 44, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Application Publication No. Sho. 52-28517 (hereinafter '517).

'517 teaches a chair-like construction 1 configured to be capable of sandwiching and releasing an arm portion of a user shown in figure 2 and English claim 1, line 4. It teaches, for example, an armrest A, 15 having a support portion 23, 39 at an upper portion thereof to support a forearm of the user and a forearm massager 25 that is mounted to the arm rest and has a connecting portion connected below the support portion to piston d, 44, 45 and a forearm massaging portion 28 configured to give pressure to the forearm of the user. The forearm massager 25 is laterally mounted to the armrest from a side and is located above the support portion 23, 39 of the armrest. While '517 may not teach that the forearm massager is removably mounted to the armrest such would have been obvious to make it removable for ease of assembly and disassembly or repair.

Regarding claim 3, the armrest of '517 is movable along the longitudinal direction of the armrest upon rollers 5 along rails 3. The connecting portion 44, 45 and the forearm massager is

movable along the longitudinal direction of the armrest along rails 3. As noted above, it would have been obvious to modify any connection to make it removable for ease of assembly, disassembly or repair.

Regarding claim 46, since the forearm massager is removably mounted to the armrest, during use the forearm massager would have to be locked in place during use to prevent it from disassembly.

Claims 4, 5, 7, 8 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 2-5, 7, 8, 12, 23, 34, 35, 37 44, 46 have been considered but are moot in view of the new ground(s) of rejection.

Regarding '517, applicant argues that '517 is complicated and difficult for the user to carry out and that the present invention enables the forearm massager to be easily mounted and removed. Since both prior art devices are removable then '517 anticipates the claimed invention. There appears to be no claim language that somehow sets forth the difference between being difficult to disassemble and being easily disassembled.

Regarding claim 3, applicant argues that the forearm massager is made movable merely by mounting the forearm massager to the detachable member "without providing complicated moving means in the forearm massager". It is not clear how much weight can be given this argument since there is nothing claimed that would somehow preclude the prior art from having complicated moving means in the forearm massager.

Regarding claim 23, applicant states that claim 23 has been amended to incorporate the features of claims 24 to 26 however, claim 24 was withdrawn in the first line under the heading "Election/Restrictions" in the last office action as being drawn to a non-elected invention. Therefore claim 23 now is drawn to a non-elected invention.

Regarding claim 35, applicant states that claim 35 has been amended to include limitations from original claim 38 however, claim 38 was withdrawn in the last office action as being drawn to a non-elected invention. Therefore claim 35 now is drawn to a non-elected invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

31 October 2008

/Danton DeMille/

Danton DeMille
Primary Examiner
Art Unit 3771